

**MEMORANDUM OF
UNDERSTANDING**

BETWEEN THE

**USDA NATURAL RESOURCES
CONSERVATION SERVICE**

AND THE

**WHITE EARTH BAND of
MINNESOTA CHIPPEWA**

MEMORANDUM OF UNDERSTANDING

WHEREAS, the United States Department of Agriculture, Natural Resources Conservation Service (NRCS) recognizes the status of the White Earth Band of Minnesota Chippewa as a Sovereign Nation and a federally recognized Indian tribe with interests in lands within the State of Minnesota; and

WHEREAS, the NRCS provides financial assistance to private landowners, American Indian Tribes, municipalities, counties, state, and federal agencies; and

WHEREAS, the NRCS has determined that NRCS programs providing financial assistance may result in effects to historic properties included in, or eligible for inclusion in the National Register of Historic Places (National Register); and

WHEREAS, NRCS desires to comply programmatically with its obligations under the National Historic Preservation Act (NHPA)(16 U.S.C. 470f); and to follow the definitions, policies and procedures for protecting cultural resources issued in the NRCS General Manual 420, Part 401 and Part 601 (Attachment 1); and

WHEREAS, the White Earth Tribal Council wishes to consult on NRCS undertakings in accordance with the National Historic Preservation Act (NHPA)(16 U.S.C. 470f) and the White Earth Tribal Historical Preservation Act and Protection of Burial Grounds Code (Attachment 2); and

WHEREAS, the NRCS has consulted with the White Earth Reservation Tribal Council (hereafter known as the Tribe) pursuant to 36 CFR 800.2(c)(1)(i) of the regulations implementing Section 106 of the National Historic Preservation Act (NHPA), 16 USC 470f; and

WHEREAS, the NRCS and the Tribe wish to develop an agreement to expedite the compliance process, speed delivery of conservation, and protect cultural resources; and

THEREFORE, the Minnesota NRCS and the Tribe agree to the following stipulations and will ensure that they are implemented:

STIPULATIONS

I. Applicability to Minnesota NRCS Programs

This agreement adjusts compliance requirements of the National Historic Preservation Act to conditions that exist in Minnesota that will facilitate NRCS actions.

Activities and Conservation Practices in Minnesota will be classified as undertakings or as exempt practices. Activities and Conservation Practices which are not specifically listed as exempt practices are considered undertakings and are presumed to have the potential to

impact historic properties/cultural resources. New activities and practices may be added to the list and review classifications may be changed by amendment to this document.

EXEMPT PRACTICES (NO REVIEW):

Practices which are not considered undertakings are not subject to cultural resources review. These practices are primarily management related practices which will not physically affect or impact a cultural resource. These practices are listed in Attachment 3 (Conservation Practices Classification).

UNDERTAKINGS (TRIBAL REVIEW REQUIRED):

These practices and activities are presumed to have the potential to impact cultural resources and are considered undertakings. These practices are listed in Attachment 3 (Conservation Practices Classification).

II. Tribe Responsibilities:

- A. The Tribe agrees to review compliance documentation on undertakings as specified for THPO review in Attachment 3 (Conservation Practices Classification). THPO further agrees to comment in writing regarding the undertakings within 30 days of receipt of the Initial Review Request.

III. NRCS Responsibilities: Standard Procedures for NRCS Personnel are illustrated in Attachment 4 (Field Office Procedure).

- A Minnesota NRCS Field Office personnel will provide pertinent information to the White Earth THPO to assist in the determination for further work on NRCS undertakings. The information will be provided on the Initial Review Request Worksheet (Attachment 5) and will include.
- Locational data, including county, township, range, section, and quarter section;
 - Labeled photocopy of part of the appropriate USGS 7.5' quad map with the area where the ground will be disturbed delineated or highlighted;
 - Current land use;
 - Practice to be installed.
 - Ground disturbing activity,
 - Total area of ground to be disturbed.
- B The Minnesota NRCS further agrees that access to specific site location data will be restricted to the Cultural Resources Coordinator (CRC), the Cultural Resources Specialist (CRS) and Geographic Information System (GIS) Specialist.
- C The NRCS agrees to provide technical assistance in erosion control and protection of eroding cultural resources when requested by the THPO and as time and staff resources permit. Requests will be coordinated through the CRC or CRS.

- IV. Human Remains: If human remains are discovered in the area of potential effect (APE) during planning or implementation of a conservation practice, all activities deemed likely to damage the remains will cease and the Office of the State Archaeologist and the White Earth THPO will be notified in accordance with the Native American Graves Protection and Repatriation Act of 1990 (NAGPRA) and in accordance with the Private Cemeteries Act (Minnesota Stat. Ann. 307.08).
- V. Curation Arrangements: When archaeological or historic material remains are recovered during the course of NRCS activities on federal, Indian, state, municipal or other public lands, recovered materials are the property of the agency or group having jurisdiction over those lands, in accordance with appropriate permits. Curation of recovered materials will be the responsibility of the agency or group having jurisdiction over those lands. NRCS has no jurisdiction over federal lands within the boundaries of the State of Minnesota.

When archaeological or historic material remains are recovered from privately owned lands, recovered materials are the property of the landowner(s). If materials are recovered during the course of an NRCS sponsored or assisted data recovery effort, the NRCS will ensure that appropriate analysis of all recovered materials are completed prior to returning them to the owners. Associated records that are prepared or assembled in connection with a federally authorized cultural resources survey, excavation, or other study, regardless of the location of the resource, become the property of the lead Federal agency.

- VI. Compliance Documentation: The Minnesota NRCS shall ensure that reports on all activities carried out pursuant to this agreement are provided to the White Earth THPO and, upon request, to other interested parties (subject to restrictions contained in Section 304 of the National Historic Preservation Act and Section 9(a) of the Archaeological Resources Protection Act).

The Minnesota NRCS shall provide the White Earth THPO with an annual report containing summary information on all of the undertakings related information described above. The document shall be a printed spreadsheet.

- VII. Discoveries: If previously unidentified cultural resources are encountered during implementation of a practice, all work shall cease immediately in the area of discovery and the NRCS shall notify the THPO, the NRCS Cultural Resources Specialist and/or Coordinator and SHPO if appropriate.
- VIII. Traditional cultural properties, sacred sites and ceremonial rites: Traditional cultural properties, sacred sites and ceremonial rites shall be treated in the same manner as other cultural resources. Priority will be given to site avoidance.
- IX. Emergencies: The Minnesota NRCS and the Minnesota SHPO agree that emergency situations will be handled in accordance with the NRCS General Manual 420, Parts 401 and 601 (Attachment 1) and the White Earth Tribal Historic Preservation Office Plan (Attachment 2).

- X Items Not Covered in this Agreement: The Minnesota NRCS and the Minnesota THPO agree that all matters not discussed in this supplemental agreement will be handled in accordance with NRCS General Manual 420, Part 401.
- XI Tribal Lands: Any provisions of this agreement shall take into consideration the terms of any agreements between NRCS and Indian tribes in accordance with Subpart B, 36CFR800.3.
- XII. Amendments: This agreement may be amended upon the request of either party. The parties will consult in accordance with NRCS GM 420, Part 401 (Attachment 1) to consider such amendments.
- XIII Conflict with NRCS General Manual Procedure and Definitions: If procedures outlined in this agreement conflict with procedures outlined in the NRCS General Manual 420, Part 401 (Attachment 1), the procedures outlined in this agreement shall be followed until such time as the procedures outlined in the NRCS General Manual 420, Part 401 are updated.

If terms defined in this agreement (Attachment 6: Definitions) conflict with definitions in the NRCS General Manual 420, Part 401 (Attachment 1), the definitions in this agreement shall be followed until such time as the definitions in the NRCS General Manual 420, Part 401 are updated.

- XIV Conflicts with White Earth Plan Procedure and Definitions: If procedures outlined in this agreement conflict with procedures outlined in the White Earth Tribal Historical Preservation Act and Protection of Burial Grounds Code (Attachment 2), the procedures outlined in this agreement shall be followed until such time as the procedures outlined in the White Earth Tribal Historical Preservation Act and Protection of Burial Grounds Code are updated.

If terms defined in this agreement (Attachment 6: Definitions) conflict with definitions in the White Earth Tribal Historical Preservation Act and Protection of Burial Grounds Code (Attachment 2), the definitions in this agreement shall be followed until such time as the definitions outlined in the White Earth Tribal Historical Preservation Act and Protection of Burial Grounds Code are updated.

- XV Termination: Either party may terminate this agreement if, after a good faith effort to negotiate, parties do not concur. The agreement may be terminated by providing thirty (30) days written notice to the other party. Otherwise, this agreement shall terminate 3 years from the date of the last signature. During the 12-month period prior to this termination date, NRCS and THPO shall meet to determine whether the agreement shall be continued beyond the initial 3 year period. If continuation of the agreement is desirable, NRCS and THPO shall prepare a subsequent agreement.

NATURAL RESOURCES CONSERVATION SERVICE

By: _____, Date _____
STATE CONSERVATIONIST

WHITE EARTH BAND OF MINNESOTA CHIPPEWA

By: _____, Date _____
DIRECTOR, NATURAL RESOURCES

By: _____, Date _____
EXECUTIVE DIRECTOR

By: _____, Date _____
WHITE EARTH TRIBAL CHAIRMAN

Attachment 1:
NRCS General Manual 420,
Part 401 - Cultural Resources
(Archeological and Historic Properties)
&
Part 601 - Cultural Resources

Attachment 2:
White Earth Tribal Historical Preservation
Act and Protection of Burial Grounds Code

Attachment 3:

Classification of Conservation Practices

Activities and Conservation Practices in Minnesota will be classified as undertakings or exempt practices. Practices which are not listed are considered undertakings and are presumed to have the potential to impact historic properties/cultural resources. New activities and practices may be added to the list and review classifications may be changed by amendment to this document.

EXEMPT PRACTICES (NOT GROUND DISTURBING):

Practices listed as not ground disturbing are not considered undertakings and no cultural resources actions are required for their installation (no review). These practices are primarily management related practices which will not have any physical effects and will not alter a cultural resource.

UNDERTAKINGS (GROUND DISTURBING):

These practices and activities are presumed to have the potential to impact cultural resources and are considered undertakings.

Copies of quad maps showing the area of potential effect for the practices will be submitted to the State Historic Preservation Office for further review. The quad maps shall be photocopied according to the following instructions.

1. Copy on a 8.5 x 11 sheet of paper
2. Copy at least one setting darker than the normal setting
3. Center the section where the practice is to be installed in the center of the page
4. Orient the quad so that north is at the top of the 8.5 by 11" copy page (portrait).
5. Do not enlarge or reduce the copy.
6. Label the quad map at the bottom of the copy. Information on the label should include:
 - County
 - Quad name
 - Landowner's name
 - Township
 - Range
 - Section
 - Quarter section
7. Locate and highlight the Area of Potential Effect on the quad.

EXEMPT PRACTICES (NO REVIEW):

322	Channel Vegetation	680	Nutrient Management
326	Clearing and Snagging	510	Pasture and Hayland Management
327	Conservation Cover when tilling a previously tilled field	512	Pasture and Hayland Planting
328	Conservation Cropping System	556	Planned Grazing Systems
329	Conservation Tillage	338	Prescribed Burning
330	Contour Farming	528	Proper Grazing
340	Cover and Green Manure Crop	550	Range Seeding
342	Critical Area Planting with no ground shaping.*	554	Regulating Water in Drainage Systems
344	Crop Residue Use	558	Roof Runoff Management
352	Deferred Grazing	557	Row Management
365	Emergency Tillage	570	Runoff Management System
380	Farmstead and Feedlot Windbreak except when planting balled and burlapped trees or shrubs*	997	Sealing Abandoned Wells
382	Fencing	572	Spoil Spreading
386	Field Border	585	Stripcropping, Contour
393	Filter Strip, Riparian-except when planting balled and burlapped trees or shrubs or when shaping ground*	589	Stripcropping, Wind
393	Filter Strip, Vegetative-except when planting balled and burlapped trees or shrubs or when shaping ground*	612	Tree Planting except when planting balled and burlapped trees*
394	Firebreaks in prairie situations or when being chemically treated	614	Trough or Tank
395	Fish Stream Improvement	620	Underground Outlet when using tile plow or breaking tiles without disturbing new ground*
399	Fishpond Management	630	Vertical Drain
412	Grassed waterway if cleaning and shaping existing waterways*	312	Waste Management System
561	Heavy Use Area Protection	633	Waste Utilization
422	Hedgerow Planting except when planting balled and burlapped shrubs or trees	636	Water Harvesting Catchment
449	Irrigation Water Management	641	Water Table Control
472	Livestock Exclusion	642	Well
484	Mulching	657	Wetland Restoration when new ground is not disturbed.
		659	Wetland Enhancement when new ground is not disturbed
		645	Wildlife Upland Habitat Management when new ground is not disturbed
		644	Wildlife Wetland Habitat Management when new ground is not disturbed

***These practices are also found on the undertakings list.
Check both lists to determine which category applies.**

UNDERTAKINGS REQUIRING REVIEW: If native sod is involved, all practices must be reviewed.

560 Access Road	452 Land Reclamation, Mine Shaft & Adit Closing
310 Bedding	453 Landslide Treatment
314 Brush Management	455 Toxic Discharge control
397 Commercial Fishponds	456 Highwall Treatment
342 Critical Area Planting with ground shaping*	543 Abandoned Mined Land
348 Dam, Diversion	544 Currently Mined Land
402 Dam, Floodwater Retarding	466 Land Smoothing
349 Dam, Multiple Purpose	468 Lined Waterway or Outlet
356 Dike	482 Mole Drain
362 Diversion	500 Obstruction Removal
380 Farmstead and Feedlot Windbreak if planting balled and burlapped trees or shrubs*	582 Open Channel
392 Field Windbreak	516 Pipeline
393 Filter Strip, Ag Waste	378 Pond
393 Filter Strip, Riparian if planting balled and burlapped trees or shrubs or shaping the ground*	521 Pond Sealing or Lining
393 Filter Strip, Vegetative if planting balled and burlapped trees or shrubs or shaping the ground*	462 Precision Land Forming
394 Firebreak	532 Pumped Well Drain
398 Fish Raceway or Tank	533 Pumping Plant for Water Control
400 Floodwater Diversion	562 Recreation Area Improvement
404 Floodway (creation)	566 Recreation Land Grading & Shaping
410 Grade Stabilization Structure	568 Recreation Trail and Walkway
412 Grassed Waterway if constructing a new waterway*	555 Rock Barrier
422 Hedgerow Planting if planting balled and burlapped trees or shrubs*	350 Sediment Basin
320 Irrigation Canal or Lateral	574 Spring Development
388 Irrigation Field Ditch	584 Stream Channel Stabilization
464 Irrigation Land Leveling	580 Streambank and Shoreline Protection
552A Irrigation Pit	587 Structure for Water Control
552B Irrigation Regulating Reservoir	606 Subsurface Drain
436 Irrigation Storage Reservoir	607 Surface Drainage, Field Ditch
441 Irrigation System, Trickle	608 Surface Drainage, Main or Lateral
442 Irrigation System, Sprinkler	600 Terrace
443 Irrigation System, Surface & Subsurface	612 Tree Planting if planting balled and burlapped trees*
447 Irrigation System, Tailwater Recover	620 Underground Outlet when disturbing new ground or not using a tile plow*
428 Irrigation Water Conveyance, Ditch & Canal Lining	425 Waste Storage Pond
430 Irrigation Water Conveyance, Pipeline	313 Waste Storage Structure
460 Land Clearing	359 Waste Treatment Lagoon
	638 Water and Sediment Control Basin
	640 Waterspreading
	656 Wetland, Constructed
	658 Wetland Creation
	650 Windbreak Renovation
	654 Woodland Improved Harvesting
	666 Woodland Improvement

660 Woodland Pruning

490 Woodland Site Preparation

*** Found on both lists according to the method of practice installation.**

Attachment 4:

Field Office Procedure

**Attachment 5:
Cultural Resources
Initial Review Request Worksheet**

Field Office _____ Date: _____
Contact Person _____ Phone: _____

Owner/ _____ Current
Operator _____ Landuse: _____

County _____ **Quad* Name** _____

Township _____ **N; Range** _____ **E/W; Section:** _____ ; **1/4 Section:** _____

Continue multiple locations on the back if needed.

Program _____ (CRP, EQIP, WRP, etc for NRCS
undertakings. State, county, municipal, tribal for non-federal actions.)

Practice Name: _____ Practice Code _____

Ground disturbing activity: _____

Total Area of Ground to be Disturbed (in acres): _____ or square feet _____

All of the blanks in this box must be filled in.

Discussion with Owner/operator:

I understand that Section 106 of the National Historic Preservation Act requires an initial review for cultural resources and may require a field examination of the location where the practice(s) will be installed.

Landowner/operator's signature

Date

NOTE: Initial Review- a description of the practice and the location of the practice installation are submitted to the State Historic Preservation Office (SHPO) and/or Tribal Historic Preservation Office (THPO). The SHPO or THPO may recommend a field review of the location based on the probability that a significant site may be adversely affected by installation of the practice.

Field Examination-a field examination is recommended when the initial review results in a high probability that a significant site may be adversely affected by the installation of the practice(s). A field examination must be conducted by a professional archaeologist. When a field examination is recommended, a list of professional consultants will be provided to the landowner/operator. NRCS is supplying the list as a courtesy to the landowner and does not endorse any of the listed consultants.

** Attach a photocopy of the appropriate USGS quad map(s). Orient the page so that north is at the top. Center the section where the practice is to be installed in the middle of the page. Set the contrast one or two shades darker than normal. Do not enlarge or reduce the photocopy. Label copy of quad map at the bottom with the county, the name of the quad, township, range, section, the name of the owner/operator, and highlight the area(s) of potential ground disturbance.*

County _____	Quad Name _____
Township _____ N; Range _____ E/W; Section: _____ ; 1/4 Section: _____	
Township _____ N; Range _____ E/W; Section: _____ ; 1/4 Section: _____	
Township _____ N; Range _____ E/W; Section: _____ ; 1/4 Section: _____	
Township _____ N; Range _____ E/W; Section: _____ ; 1/4 Section: _____	

Send the completed form and labeled map to:

Tribal Historic Preservation Office
 White Earth Band of Minnesota Chippewa
 41044 South Ice Cracking Road
 Ponsford, MN 56575

and to:

State Historic Preservation Office
 Compliance Review
 345 Kellogg Boulevard West
 St. Paul, Minnesota 55102-1906

Copy the completed form to:

Bill Lorenzen, Cultural Resources Coordinator
 NRCS Minnesota State Office

Attachment 6: Definitions

The following definitions for these terms prevail over definitions in the NRCS General Manual, Parts 401 and 601 (Attachment 1) and the White Earth Tribal Historical Preservation Act and Protection of Burial Grounds Code (Attachment 2).

"Conservation Practice" means a specific treatment, such as a structural or vegetative measure, or management technique, commonly used to meet specific needs in planning and implementing conservation, for which standards and specifications have been developed. (USDA Natural Resources Conservation Service National Planning Procedures Handbook, Part 600.6, Amendment 3, dated January 2000)

"Consultation" means the process of seeking, discussing, and considering the views of other participants, and, where feasible, seeking agreement with them regarding matters arising in the section 106 process. (36 CFR 800.16(f)).

"Effect" means alteration to the characteristics of a historic property qualifying it for inclusion in or eligibility for the National Register of Historic Places. (36CFR 800.16(i)). **"Field Investigation"** means a pedestrian reconnaissance of the area of potential effect to determine whether sites are present and, if sites are present, whether the sites can be avoided. Pedestrian reconnaissance may include shovel testing in transects not to exceed 10 meter intervals. The field investigation is conducted by a professional, qualified archaeologist. Contracting for a qualified archaeologist and funding for the survey are the responsibility of the landowner, except for Wetland Reserve Program (WRP) projects. NRCS funds field investigations on WRP projects, should the agency decide to proceed with the project.

"Financial Assistance" means funding provided to pay the cost of installation of a conservation practice or practices. When the federal government pays all or part of the cost of installing a practice, it is referred to as "federal financial assistance". Federal financial assistance does not include time and salary of federal employees.

"Historic Property" means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria. (36 CFR 800.16(l)(1))

"Impact" means an effect that could change the qualities of a cultural resource characteristic. Impact and effect are used synonymously in this MOU.

"Initial Review" means a search of relevant background material to discover whether any known sites exist in the project's area of potential effect or whether the area of potential effect is in a high probability location for the presence of a site. Background material includes, but is not limited to, data from the Tribal data base, the State Archaeologist's Office, the State Historic Preservation Office, and the Bureau of Indian Affairs Regional Office. The review results in a recommendation for the project to proceed as planned or for a field investigation by a professional archaeologist.

"Initial Review Request" means the agency submits pertinent information regarding a project to the THPO and to SHPO requesting a recommendation to proceed with the project or a recommendation for a field investigation by a professional archaeologist.

"Practice" refers to "Conservation Practice" as defined above.

"Technical Assistance" means the engineering, agronomic or discipline-specific advice, recommendations and guidance provided to a landowner, cooperator or project sponsor regarding program implementation including, but not limited to, the proper installation of conservation practices. The landowner, cooperator or project sponsor has the option of following or not following such advice, recommendations or guidance.

"Tribal lands" means-- (A) all lands within the exterior boundaries of any Indian reservation; and (B) all dependent Indian communities (National Historic Preservation Act as amended, Section 301(14)).

"Undertaking" means a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including-- (A) those carried out by or on behalf of the agency; (B) those carried out with Federal financial assistance; (C) those requiring a Federal permit, license, or approval; and (D) those subject to State or local regulation administered pursuant to a delegation or approval by a Federal agency (National Historic Preservation Act as amended, Section 301(7)).